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Attorneys for Defendant
VICTOR CONTE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHANE D. MOSLEY, SR.,

Plaintiff,

vs.

VICTOR CONTE,

Defendant.

Case No. C 08-01777 JSW

**DECLARATION OF JAMES M.
WAGSTAFFE IN SUPPORT OF
DEFENDANT VICTOR CONTE'S
MOTION FOR SANCTIONS AND
ATTORNEYS' FEES (C.C.P. § 425.16(c))**

Hearing Date: December 24, 2008
Time: 9:00 a.m.
Courtroom: 2

HON. JEFFREY S. WHITE

1 I, James M. Wagstaffe, hereby declare:

2 1. I am an attorney licensed to practice before all courts in the State of California, and
3 am a partner of the law firm of Kerr & Wagstaffe LLP, attorneys of record for Defendant Victor
4 Conte ("Conte") in this action. I have personal knowledge of the facts stated herein, and, if
5 called as a witness, could and would competently testify to them under oath.

6 2. In April 2008, Victor Conte hired Kerr & Wagstaffe LLP to defend a defamation
7 suit brought against him by plaintiff Shane Mosley. In addition to the normal research and
8 analysis that needed to be conducted to defend the matter (including preparing a motion to
9 dismiss, we, on behalf of Mr. Conte, had to oppose Plaintiff's motion to shorten the
10 administrative deadlines as well as the motion to expedite the trial, which was ultimately denied.
11 The motion to permit early discovery, however, was granted. This led to additional work related
12 to drafting and responding to written discovery, scheduling depositions, responding to
13 subpoenas, and other matters.

14 3. Our firm has worked previously for Mr. Conte. As a result, our firm is familiar with
15 the facts that underlie the plaintiff's complaint, in particular the media attention and litigation
16 surrounding the BALCO proceedings. As a result, we were able to address this case in an
17 efficient and economical fashion.

18 4. In order to increase efficiency and to control the costs in going forward with the
19 defense of this case, I assigned primary responsibility for coordinating the various tasks to Ivo
20 Labar, who previously worked on matters involving Mr. Conte. Mr. Labar is a partner with our
21 firm and handles trial and appellate litigation, emphasizing media, employment and
22 constitutional law. Mr. Labar graduated with honors from the California Maritime Academy in
23 1994 with a B.S. in Marine Transportation and a Third Mate's license. He served as a deck
24 officer in the United States Merchant Marine and a reserve officer in the U.S. Coast Guard. He
25 received a J.D. with honors from the University of California Hastings College of the Law in
26 1999. Following law school, he served as a law clerk to the Honorable Charles A. Legge, United
27 States District Court for the Northern District of California. He is also a contributing editor to
28 the Rutter Group's practice guide Federal Civil Procedure Before Trial and regularly speaks at

presentations regarding new developments in Federal Civil Procedure, including class action practice. His hourly rate is \$375. These hourly rates are at or even below the reasonable market value for such services in the San Francisco community.

5. I also worked on this matter, largely in the capacity of case supervisor and reviewer of documents. I received an A.B. Degree from Stanford University in 1977 and my J.D. Degree from the University of California Hastings College of the Law in 1980. From 1980 through 1982 I served as a law clerk to the Honorable Spencer Williams, United States District Judge for the Northern District of California. From 1982 through 1986 and again from 1990 through 1999 I worked as an associate and later partner at the law firm of Cooper, White & Cooper in San Francisco. From 1986 through 1990 I was a partner at the law firm of Kaus, Kerr & Wagstaffe, and from 1999 to the present I have been a partner in the firm of Kerr & Wagstaffe LLP. Throughout my professional career, I have specialized, in part, in working on First Amendment and other constitutional cases. I have represented newspapers, magazines, television stations and other media defendants in defamation suits for over twenty years. I have worked on numerous Special Motions to Strike under California's anti-SLAPP statute. I was the primary attorney at both the trial and appellate level in the case of Lafayette Morehouse v. San Francisco Chronicle. I have tried several libel suits and have been a teacher in Journalism Law at San Francisco State University for over ten years. I am the co-author of the Rutter Group's Federal Civil Procedure Before Trial 3-volume work. My hourly rate in this matter is \$495 per hour. My hourly rate is at or even below the reasonable market value for such services in the San Francisco community.

6. The following chart summarizes Defendant's total lodestar amount of fees incurred in defending this action:

<u>Attorney/Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
James M. Wagstaffe	20.30	495.00	\$10,048.50
Ivo Labar	153.70	375.00	\$57,637.50
Holly Hogan	22.00	235.00	\$5,170.00
Garfield Pallister (Paralegal)	11.70	130.00	\$1,521.00
Sarah Smoot	11.20	110.00	\$1,232.00

(Paralegal)			
Michael McCarthy (Case Clerk)	.90	50.00	\$45.00

Total Fees: \$75,654.00

7. Defendant respectfully requests that the Court award this amount pursuant to the Court's inherent authority.

FEES RELATED TO ANTI-SLAPP MOTION

8. In addition to taking the actions described above, upon receipt of the pleadings and an analysis thereof, we promptly began analyzing a case strategy based on filing a Special Motion to Strike under California's anti-SLAPP statute, Code of Civil Procedure §425.16. In the course of performing our work on the anti-SLAPP motion for the Defendant in this case, we provided an initial evaluation of the matter, processed certain documents, readied for the anti-SLAPP motion, researched the various legal issues raised by the motion, drafted the opening brief, reviewed the opposition brief, and drafted the reply brief. In addition, we drafted the motion for attorney's fees and anticipate reviewing an opposition, filing a reply brief and appearing at the oral argument.

The billing records attached hereto as Exhibit A reflect the following reasonable time incurred:

<u>Attorney/Staff</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
James M. Wagstaffe	10.60	495.00	\$5,247.00
Ivo Labar	75.50	375.00	\$28,312.50
Holly Hogan	.40	235.00	\$94.00
Garfield Pallister (Paralegal)	1.90	130.00	\$247.00
Sarah Smoot (Paralegal)	3.90	110.00	\$429.00

Total Fees: \$34,329.50

1 9. In connection with preparing this motion for attorney's fees, we have incurred the
 2 following time charges: 2 hours x \$495 + 5 hours x \$375 = \$3,615. We anticipate that we will
 3 spend 5 hours in reviewing the opposition brief and preparing a reply brief: 1 hour x \$495 + 4
 4 hours x \$375 = \$1,995. We also anticipate the preparation for and attendance at the oral
 5 argument would require 3 hours: 2 hours x \$495 + 1 hour x \$375 = \$1,365. Thus, the total
 6 amount of \$6,975 is being sought for the preparation of this motion and for the oral argument.
 7 These charges are quite reasonable under the circumstances.

8 10. None of the fees claimed here relate to work that was done on items other than the
 9 work connected with the anti-SLAPP motion.

10 11. As noted above, I have worked on numerous fee petitions over the years, including
 11 on fee motions under the California anti-SLAPP statute. I have also consulted with other
 12 attorneys who were filing fee applications in anti-SLAPP cases and have filed expert
 13 declarations in that regard. When one compares the total amount charged on work on this case
 14 with awards made in other cases for attorneys' fees, it demonstrates clearly that the fees sought
 15 here are reasonable and exceptionally low. The request here is well below amounts awarded for
 16 work on the anti-SLAPP motions in the trial courts in other cases, including several affirmed on
 17 appeal. For example, in the Lafayette Morehouse, Inc. v. Chronicle Publishing Co., a case
 18 decided over ten years ago at substantially lower rates, the court awarded in excess of
 19 \$100,000.00 as a reasonable attorney fee. And while the Court of Appeal, in its second opinion
 20 rendered before the later statutory amendment compelling a broad reading of the anti-SLAPP
 21 law, allowed fees on the motion itself, the trial court on remand (Hon. William Cahill) allowed
 22 all fees expended on the defense except for a small amount of time spent on a motion to quash
 23 for a collateral defendant. Thus, the court awarded fees for client meetings, review of the
 24 complaint, discovery analysis and work on the appeal. Similarly, in the Church of Scientology v.
 25 Wollersheim case, the court awarded in excess of \$90,000.00 in reasonable attorneys' fees over a
 26 decade ago. The amount sought here, a fraction of these figures, is both reasonable and reflects
 27 the expertise of the attorneys involved.

1 I declare under penalty of perjury under the law of the United States of America that the
2 foregoing is true and correct.

3 Executed in San Francisco, California on August 28, 2008

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